



Paper No. 15

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OFFICE OF PETITIONS

In re Application of
Cunningham, Hobbs, Pepper, Lin, Li, Pien
Application No. 09/929,957
Filed: August 15, 2001
For : LABEL-FREE HIGH-THROUGHPUT
OPTICAL TECHNIQUE FOR DETECTING
BIOMOLECULAR INTERACTIONS

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: ON PETITION
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This is a decision on the petition filed August 21, 2002, under 37 CFR 1.1.182 on behalf of non-signing joint inventor Hobbs, seeking acceptance of a power of attorney by less than all the joint inventors.

The petition is **dismissed**.

Petitioner Hobbs seeks his to appoint his own counsel in this case, as he "desires to participate in the prosecution of this application" However, petitioner appears to be unaware that this application has been accorded Rule 47 status due to his refusal to join with the other named inventors in signing the declaration filed under 37 CFR 1.63 naming five other joint inventors. Since petitioner has refused to join with the other five named inventors in signing the declaration herein, the procedure set forth in MPEP 402.10 requiring a petition under 37 CFR 1.182 seeking appointment of diverse counsel does not apply to this case. Rather, that procedure is only available to those inventors who have already jointly signed the oath or declaration and then seek diverse representation.

The declaration under 37 CFR 1.63 signed by Hobbs that was proffered with the instant petition asserts only his sole inventorship and manifestly does not recognize the other named inventors as being joint inventors in the above-identified application. As such, Hobbs cannot properly said to have "joined" in this application at this time within the meaning of MPEP 409.03(i). As further noted in that MPEP section, a non signing inventor is not entitled to prosecute the application in which he refuses to join.

Should nonsigning inventor Hobbs subsequently join in this application by executing an appropriate oath or declaration, any request for a separate power of attorney for Hobbs will require the agreement of the other signatory inventors. See MPEP 409.03(i).

A courtesy copy of this decision is being mailed to counsel who filed the petition of behalf of Hobbs on a one time basis only. The USPTO will not undertake dual correspondence. See 37 CFR 1.33(a).

This application is being forwarded to Technology Center AU 1743.

Telephone inquiries related to this decision should be directed to the undersigned at (703) 305-1820.



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cc:

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